



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/711,580

09/26/2004

James Francis Duffy JR.

5579

37476 7590 01/17/2007
WHITE-WELKER & WELKER, LLC
P.O. BOX 199
CLEAR SPRING, MD 21722-0199

EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
--	-----------	---------------

3 MONTHS

01/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/711,580	Applicant(s) DUFFY, JAMES FRANCIS	
	Examiner Brent T. O'Hern	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-10 is/are pending in the application.
- 4a) Of the above claim(s) 6-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-5 is/are rejected.
- 7) ☒ Claim(s) 5-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Claims 2-10 are pending with claims 6-10 being non-elected process claims.

Election/Restrictions

2. Newly submitted claims 6-10 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 6-10 are drawn to a **method** for processing, filling and capping a bottle, wherein claims 2-5 are directed to a product, a bottle.

Since applicant has received an action on the merits for the originally presented invention, this invention has been **constructively elected by original presentation** for prosecution on the merits. Accordingly, claims 6-10 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

WITHDRAWN REJECTIONS

3. The 35 U.S.C. 102(b) rejections of claims 1-3 of record as being anticipated by Sincock (US 3,900,120) in the Office Action mailed 21 August 2006, page 2, paragraph 1 have been withdrawn due to Applicant's amendments in the Paper filed 21 November 2006.
4. The 35 U.S.C. 103(a) rejections of claim 4 of record as being unpatentable over Sincock (US 3,900,120) in view of Peronek et al. (US 6,698,160) in the Office Action mailed 21 August 2006, page 3, paragraph 2 have been withdrawn due to Applicant's amendments in the Paper filed 21 November 2006.

NEW OBJECTIONS

Specification

5. The amendment filed 21 November 2006 is objected to under 35 U.S.C. 132(a) because it introduces **new matter** into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: in claim 2, lines 8-9 Applicant states "**includes small indentation at its center**".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

6. Claims 5-10 are objected to because of the following informalities: The newly added claims are improperly underlined (see MPEP 714). Appropriate correction is required.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 2-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the **written description** requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had

Art Unit: 1772

possession of the claimed invention. In claim 2, lines 8-9 Applicant adds the new matter **"includes small indentation at its center"**.

Claim Rejections - 35 USC § 102

8. Claims 2-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Sincok (US 3,900,120).

Regarding claim 2, Sincok ('120) teaches a hollow, cylindrical-shaped bottle (FIG-1, #10 and col. 5, ll. 13-42) consisting of:

an open-ended mouth-forming portion (FIG-1, #26 and col. 5, ll. 24-27),
 an intermediate body-forming portion (FIG-1, #22 and col. 5, ll. 15-17) and
 a closed, hemispherical-shaped base-forming portion (FIG-1, #20 and col. 5, ll. 3-8).

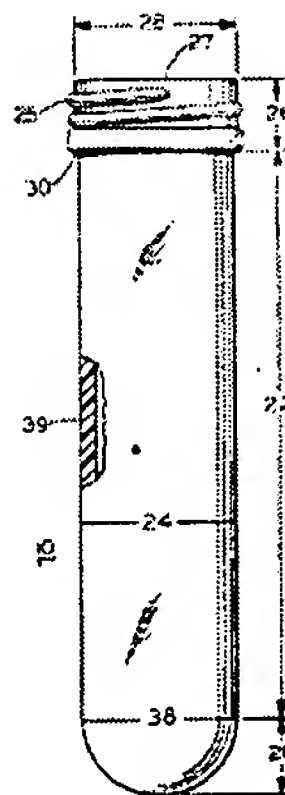


FIG. 1

Regarding claim 2, Sincok ('120) teaches a bottle wherein the body-forming portion has constant outer and constant inner diameters (FIG-1, #10, col. 5, ll. 5-16 and col. 8, ll. 3-8), and the bottom-forming portion has constant wall thickness (FIG-1, #10, col. 5, ll. 5-16 and col. 8, ll. 3-8 wherein the bottom forming portion has a constant wall thickness), and includes a small indentation at

Art Unit: 1772

its center (*See FIG-1 wherein the curved bottom clearly forms an indentation at its center.*).

Regarding claim 3, Sincock ('120) teaches a bottle wherein the body-forming, base-forming and mouth forming portions have a minimum wall thickness of 1.5 mm and maximum wall thickness of 4 mm (*col. 8, ll. 45-53 wherein the thickness of 70-300 mils equals 1.78 – 7.64 mm*).

Claim Rejections - 35 USC § 103

9. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sincock (US 3,900,120) in view of Peronek et al. (US 6,698,160).

Regarding claim 4, Sincock ('120) teaches the bottle discussed above, however fails to expressly disclose wherein the mouth-forming portion comprises a polygonal-shaped flange perpendicular to the plane of the body-forming portion and where each isometric outside surface of the flange is substantially straight and used for holding and stabilizing said bottle during processing and said polygonal-shaped flange having six straight sides.

However, Peronek ('160) teaches wherein the mouth-forming portion comprises a polygonal-shaped flange perpendicular to the plane of the body-forming portion and where each isometric outside surface of the flange is substantially straight (*See FIG-5, #170 and col. 16, l. 64 to col. 17, l. 8 wherein a six-sided polygonal-shaped flange is a well known polygonal-shaped flange.*) for the purpose of inhibiting or preventing rotation of the bottle during the capping process (*col. 18, ll. 25-37*).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time applicant's invention was made to modify Sinock's ('120) bottle with the above polygonal-shaped flange as taught by Peronek ('160) in order to provide a bottle that inhibits or prevents rotation during capping.

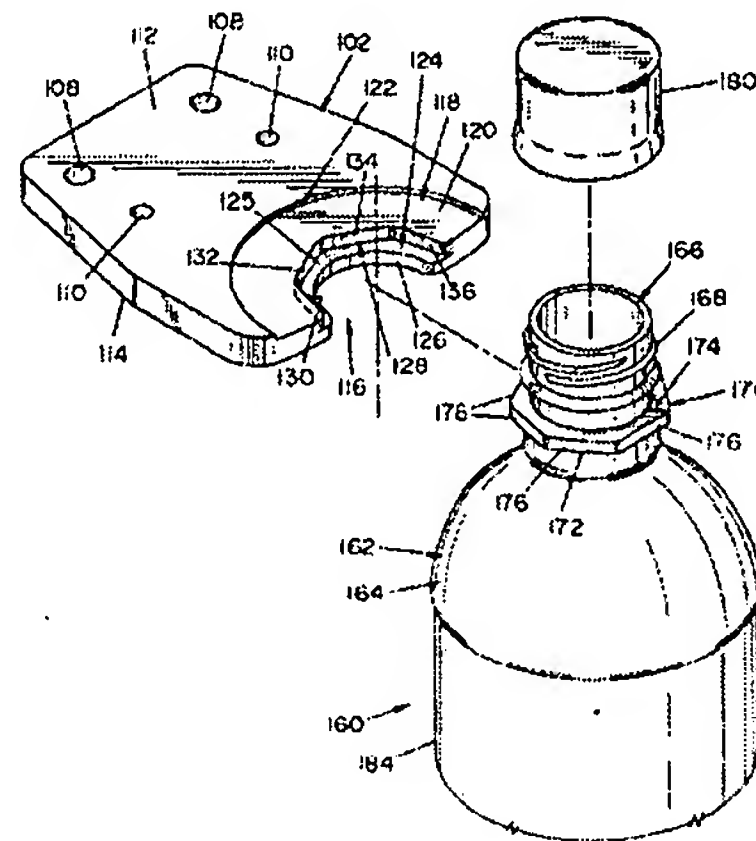


FIG. 5

The phrase "and used for holding and stabilizing said bottle during processing" in claim 4, line 4 is not given any patentable weight since the applicant is introducing **use limitations** into the product claims (see *MPEP* 2173 (q)).

Regarding claim 5, Sincock ('120) teaches the bottle discussed above, however fails to expressly disclose wherein the polygonal-shaped flange has eight or more even numbered straight sides.

However, Peronek ('160) teaches wherein the mouth-forming portion comprises a polygonal-shaped flange (See FIG-5, #170 and col. 16, l. 64 to col. 17, l. 8 wherein an eight-sided polygonal-shaped flange is a well known polygonal-shaped flange.) for the purpose of inhibiting or preventing rotation of the bottle during the capping process (col. 18, ll. 25-37).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time applicant's invention was made to modify Sinock's ('120) bottle with the above polygonal-shaped flange as taught by Peronek ('160) in order to provide a bottle that inhibits or prevents rotation during capping.

ANSWERS TO APPLICANT'S ARGUMENTS

10. In response to Applicant's argument (*on p. 5, para. 3 to p. 6, para. 3 of Applicant's Paper* filed 21 November 2006) that Sinock's ('120) bottle is not suitable nor practical for use as a container, it is noted that patentability of Applicant's product is based on the structural limitations of Applicant's product not on what the product may be used for. Furthermore, as discussed above, Sinock's ('120) bottle is clearly a container.

11. In response to Applicant's argument (*on p. 7, paras. 1-2 of Applicant's Paper* filed 21 November 2006) that the wall thickness of Sinock's ('120) bottle toward the bottom **"must be greater"** than the thickness near the top of the body, it is noted that Applicant failed to provide any evidence of said requirement within Sinock ('120).

12. In response to Applicant's argument (*on p. 8, para. 1 of Applicant's Paper* filed 21 November 2006) that "'281 does not disclose the use", it is noted that the Examiner never cited a reference with the numbers '281, thus it is unclear what Applicant is referring to.

13. In response to Applicant's argument (*on p. 8, para. 2 of Applicant's Paper* filed 21 November 2006) that Sinock ('120) does not teach a small indentation at its center, it is

Art Unit: 1772

noted that Sincock ('120) teaches a small indentation at its center (*See FIG-1 wherein the curved bottom clearly forms an indentation at its center.*).

14. In response to Applicant's argument (*on p. 8, para. 3 of Applicant's Paper* filed 21 November 2006) that Sinock ('120) does not teach a constant inner and outer diameters, it is noted that Sincock ('120) teaches a bottle wherein the body-forming portion has constant outer and constant inner diameters (*See FIG-1, #10, col. 5, ll. 5-16 and col. 8, ll. 3-8.*). Furthermore, Applicant has failed to provide any evidence that Sincock ('120) does not teach constant outer and constant inner diameters.

15. In response to Applicant's argument (*on p. 9, paras. 1-3 of Applicant's Paper* filed 21 November 2006) that the purpose of Sinock ('120) is very different from Applicant's purpose, it is noted that patentability of Applicant's product is determined by the structural limitations of Applicant's product, not an asserted purpose of Applicant's product, thus Applicant's argument is not germane to any issue at bar.

16. In response to Applicant's argument (*on p. 10, para. 3 to p. 11, para. 3 of Applicant's Paper* filed 21 November 2006) that Peronek ('160) does not teach a six-sided polygonal shaped flange, it is noted, as discussed above that Peronek ('160) teaches wherein the mouth-forming portion comprises a polygonal-shaped flange perpendicular to the plane of the body-forming portion and where each isometric outside surface of the flange is substantially straight (*See FIG-5, #170 and col. 16, l. 64 to col. 17, l. 8 wherein a six-sided polygonal-shaped flange is a well known polygonal-shaped flange.*) for the purpose of inhibiting or preventing rotation of the bottle during the capping process (*col. 18, ll. 25-37*). Therefore, it would have been obvious to a person

Art Unit: 1772

of ordinary skill in the art at the time applicant's invention was made to modify Sinock's ('120) bottle with the above polygonal-shaped flange as taught by Peronek ('160) in order to provide a bottle that inhibits or prevents rotation during capping.

17. In response to Applicant's statement (*on p. 11, paras. 5 of Applicant's Paper filed 21 November 2006*) regarding the addition of claims 6-10, it is noted as discussed above that these claims are process claims which will not be examined at this time since Applicant has constructively elected by original presentation for prosecution on the merits the product claims.

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1772

Conclusion

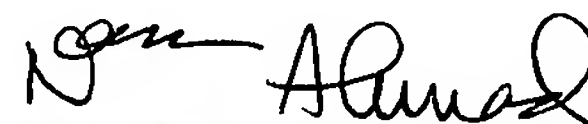
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571) 272-0496. The examiner can normally be reached on M-F, 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-2172. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BTO

Brent T O'Hern
Examiner
Art Unit 1772
January 3, 2007


NASSER AHMAD
PRIMARY EXAMINER 1/9/07